
Watch Out for Seed Violations

North Dakota's state seed commissioner, Ken Bertsch, cautions farmers to avoid potential violations of state and federal seed laws in the purchase and planting of protected seed varieties.

"Given the protection afforded nearly every seed variety used, whether through Plant Variety Protection (PVP), PVP Title V or other instruments, such as patents, it is important that growers acquire seed through legal channels," Bertsch says.

As variety protection becomes the norm industrywide, knowledge and adherence to seed laws becomes imperative for growers, seed conditioners and producers who maintain stocks of protected varieties of all types. Seed of protected varieties can be sold only with approval from the variety owner. Varieties protected by PVP Title V can be sold only as a class of certified seed. Most cereal crops, soybeans and minor crops are protected by the developer, whether a private company or university breeding program.

"In general terms, unless the seed being purchased is accompanied by a certified, registered or foundation class label or comes from a reputable dealer with authorization from the owner to market the seed, you shouldn't purchase and plant the seed," Bertsch says. "Brown-bagged seed isn't worth the risk and everyone involved in the transaction is a part of that risk pool."

Brown-bagging, a term used to describe the practice of selling unauthorized seed in transactions that are generally farmer-to-farmer, is a violation of state and federal seed laws. While a farmer is allowed to save and replant seed that has been purchased legally, he or she cannot market that seed to anyone else for planting purposes. Protected varieties cannot be sold or exchanged unless produced and inspected under rules and standards for the certified class or have been given authorization from the variety owner and comply with state and federal labeling laws.

"We learn of potential seed law violations every year, either by regulatory inspection or tips from the industry," Bertsch says. "We investigate these alleged violations in every case where reasonable evidence exists and then levy administrative fines when necessary."

The State Seed Department has authority to levy fines for statutory violations ranging from \$250 for simple labeling infractions to \$5,000 for violations of PVP laws. Additionally, owners of varieties have the ability to file civil actions and obtain triple the damages on the seed sold and on the grain produced from the illegally planted seed. Major violations of PVP and labeling laws have resulted in fines and fees upward of \$50,000.

Variety identification testing technology has improved. The improvements give regulatory agencies more tools for enforcing variety protection programs.

“For example, if a viable complaint of a PVP infringement comes to us, we have the ability to test the plant tissue of some crops to determine the variety,” Bertsch says. “State law requires that labelers (seed companies or growers) maintain seed sale records and purchases for three years. A grower suspected of violating the law may be asked to produce proof of purchase and point-of-sale records. This isn’t just about the seller. The purchaser and conditioner of the seed also are at risk in terms of infringement of the owner’s intellectual property rights.”

Brown-bagged seed damages the entire industry. The variety owner or developer loses royalties that are used to develop new varieties. The legitimate seedsman loses sales and revenue, while the producer plants an illegal and inferior product.

“In these cases, everyone loses,” Bertsch says.

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